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## IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

## FOURTH APPELLATE DISTRICT

#### **DIVISION THREE**

In re Marriage of LAWRENCE R. and SYLVIA KLINGLER.

LAWRENCE R. KLINGLER,

Respondent,

v.

SYLVIA KLINGLER,

Appellant.

G055998

(Super. Ct. No. 11D010380)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Frank Ospino, Judge. Affirmed.

The Law Offices of Saylin & Swisher, Brian G. Saylin, Lindsay L. Swisher and Merritt Lori McKeon for Appellant.

Hughes and Hughes, Lisa Hughes and Kathryn Yarnal for Respondent.

\* \* \*

This is a marriage dissolution case involving appellant Sylvia Klingler and respondent Lawrence R. Klingler (Larry). During their marriage, Larry purchased a home located at 8 Observatory in Newport Beach (Observatory). Shortly thereafter, Sylvia executed an Interspousal Grant Transfer Deed (IGTD), which purportedly transmuted Observatory from community property into Larry's separate property.

There was a trial and we generally affirmed the dissolution judgment in an earlier appeal. (*Klingler v. Klingler* (Sept. 30, 2016, G051548) [nonpub. opn.] (*Klingler I*).) However, we remanded the matter to address a discrete issue: "whether Larry offered sufficient evidence to overcome the presumption of undue influence that attached to the [IGTD] executed by Sylvia in connection with that property." (*Ibid.*)

On remand, the trial court found that Larry offered sufficient evidence to overcome the presumption of undue influence. Sylvia argues that "the record does not contain substantial evidence to support such a finding." We disagree. Sylvia also raises two evidentiary claims that we find to be meritless. Thus, we affirm the judgment.

I

## FACTS AND PROCEDURAL BACKGROUND

In January 2002, Larry and Sylvia married. (*Klingler I, supra*, G051548.) In December 2004, Larry purchased Observatory. Later that month, Sylvia signed an IGTD: "Sylvia grants the Observatory property to Larry, and recites '[i]t is the express intent of [Sylvia], being the spouse of [Larry] to convey all right, title and interest of [Sylvia], community or otherwise, in and to herein described property to [Larry] as his/her sole and separate property." (*Ibid.*, fn. omitted.)

During April, May, June, and July 2014, there was a lengthy dissolution trial. At its conclusion, Judge Carla Singer found that "the community had no equity in

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<sup>&</sup>lt;sup>1</sup> To avoid confusion, we will refer to the parties by their first names.

Observatory at the time Sylvia signed the [IGTD], and thus it effectively transferred nothing." (*Klingler I, supra*, G051548.) As a result, the trial court never reached the issue of undue influence. (*Ibid.*)

On appeal, this court generally affirmed the judgment, but we disagreed with the trial court's analysis regarding the IGTD and undue influence. We found that the "the majority of Observatory's down payment was made with community funds, rather than Larry's separate property and consequently this analysis cannot stand. Instead, we conclude that the [IGTD] triggered the presumption of undue influence because it reflects a transmutation of the community's interest in Observatory in exchange for no consideration." (*Klingler I, supra*, G051548.)

The disposition read: "The judgment is reversed as to the characterization of the Observatory property [as Larry's separate property] and the case is remanded to the trial court with directions to assess whether Larry offered sufficient evidence to overcome the presumption of undue influence that attached to the [IGTD] executed by Sylvia in connection with that property. If the court concludes that he did not, the Observatory property must be characterized as community property . . . . In all other respects, the judgment is affirmed." (*Klingler I*, *supra*, G051548.)

On remand, the matter came before Judge Frank Ospino. In a lengthy statement of decision, the court found "ample evidence in the record sufficient to demonstrate that [Larry], has in fact rebutted the presumption of undue influence and that the execution of the [IGTD] was done freely, knowingly, and intelligently, with full knowledge on the part of [Sylvia], as to what was being done." Sylvia appeals from that ruling.

H

#### DISCUSSION

Sylvia argues that there was no substantial evidence to support the trial court's finding that Larry overcame "the presumption that the [IGTD] was obtained by undue influence." Sylvia also raises two evidentiary issues.

### A. Substantial Evidence

"Where [a] statement of decision sets forth the factual and legal basis for the decision, any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision." (*In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 358.) "Substantial evidence includes circumstantial evidence and the reasonable inferences flowing therefrom." (*Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1577.) "The testimony of a single credible witness may constitute substantial evidence." (*City and County of San Francisco v. Ballard* (2006) 136 Cal.App.4th 381, 396.)

When conducting a substantial evidence review, we view the whole record in a light most favorable to the judgment, we resolve all evidentiary conflicts in favor of the decision, and we draw all reasonable inferences in favor thereof. (*CADC/RADC Venture 2011-1 LLC v. Bradley* (2015) 235 Cal.App.4th 775, 787.) "The substantial evidence standard of review is generally considered the most difficult standard of review to meet, as it should be, because it is not the function of the reviewing court to determine the facts." (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589.)

## 1. Undue Influence

Undue influence involves excessive pressure by an influencer to persuade a person who is vulnerable to such pressure. "Undue influence' means excessive

persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity." (Welf. & Inst. Code, § 15610.70, subd. (a).)<sup>2</sup> The factors considered in determining "undue influence" include, but are not limited to: the vulnerability of the person, the influencer's apparent authority, the actions or tactics of the influencer, and the equity of the result. (§ 15610.70, subd. (a)(1)-(4).) However, "[e]vidence of an inequitable result, without more, is not sufficient to prove undue influence." (§ 15610.70, subd. (b).)

#### 2. Relevant Evidence

When Sylvia signed the IGTD, she was 51 years old. She had obtained an AA degree in marketing. Sylvia understood what a "deed" is; she had previously purchased a condominium in 1987. Sylvia had also owned a residence during a prior marriage; her ex-spouse had bought out her interest in the property. Sylvia understood what it means to be on a "title" to real property.

Prior to purchasing Observatory, Larry had discussed the deed with Sylvia several times. Larry had told Sylvia that he "would get a line of credit, use the equity from my properties to put as a down payment on the new property. I would be -- it would be my property." Sylvia understood that the value of the Observatory property was over \$2 million, and there would need to be a loan taken out on the property before an escrow period closed. Sylvia understood that Larry was borrowing the money for Observatory. Sylvia acknowledged that she did not fill out any credit forms, or participate in the loan process to acquire Observatory. Prior to signing the IGTD, Larry discussed with Sylvia that she would be granting the property to him as his separate property.

The IGTD is a one-page document with a single attached exhibit describing the Observatory property. The title of the IGTD is in a larger font than the rest of the

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<sup>&</sup>lt;sup>2</sup> Further undesignated statutory references are to the Welfare and Institutions Code.

document. It reads (in boldfaced and capitalized letters): "INTERSPOUSAL TRANSFER GRANT DEED." Just above the signature line, it includes this sentence in boldface: "It is the express Intent of the Grantor, being the spouse of the Grantee, to convey all right, title, and interest of the Grantor, community or otherwise, in and to the herein described property to the Grantee as his/her sole and separate property." Sylvia signed the IGTD above her preprinted name on December 16, 2004. Sylvia acknowledged that it was her signature. Sylvia went to a notary on December 23, 2004, and had the IGTD notarized.

## 3. Analysis

On remand, Judge Ospino carefully "read, reviewed and considered" the transcripts and the relevant exhibits from the first trial, which had been presided over by Judge Singer. Prior to Judge Ospino issuing his findings, the parties "represented that each was 'satisfied that [the court] considered all of the relevant documents in evidence in this case."

Judge Ospino said that he had not "made any independent credibility determinations of the parties and/or the witnesses presented at the original trial in 2014, because this court was not the original trier of fact." However, Judge Ospino noted that Judge Singer did "assess credibility and made certain findings. Those findings were factual determinations." Judge Ospino said that he "combed through the record and [the court] is satisfied that those factual findings were supported by substantial evidence."

Here, there was evidence in the record that Larry had discussed with Sylvia on multiple occasions prior to her signing the IGTD that he intended Observatory to be his own personal property. The IGTD was in evidence. It is a one-page document that states in relatively plain language that Sylvia was agreeing to grant Observatory to Larry as his sole and separate property. This was not Sylvia's first marriage, so it is reasonable to infer that she understood the distinction between community and separate property.

Sylvia also had some experience with the purchasing, deeding, and owning of real property. Based on her background, education, age, and experience, it is a reasonable inference that Sylvia was capable of reading and understanding the import of the IGTD. There was also evidence that Sylvia had the opportunity to reflect on her decision: about a week after she signed the IGTD she took it to a notary to have it notarized.

What is notably lacking is any evidence that Larry was in any manner duplicitous, or that he had exerted any kind of pressure to persuade Sylvia to sign the IGTD. Although arguably the IGTD worked to her detriment, "an inequitable result, without more, is not sufficient to prove undue influence." (§ 15610.70, subd. (b).) In sum, the evidence supports the trial court's finding that Sylvia signed the document "freely, knowingly, and intelligently, with full knowledge . . . , as to what was being done." In other words, there is substantial evidence to support the court's finding that Larry rebutted the presumption of undue influence.

Sylvia argues that the trial court on remand was "obligated to make its own findings and to not rely on the findings of the former (reversed) trial court." (Boldfacing, capitalization, and underlining omitted.) We reject the premise of Sylvia's argument. It is true that throughout the statement of decision, Judge Ospino identified and "adopted" several credibility and other factual determinations made by Judge Singer. But the court also stated that it had "combed through the record" and satisfied itself that "those factual findings were supported by substantial evidence." That is precisely what we directed the trial court to do: "[T]he case is remanded to the trial court with directions to assess whether Larry offered substantial evidence to overcome the presumption of undue influence that attached to the [IGTD] executed by Sylvia in connection with [the Observatory] property." (Klingler I, supra, G051548.)

Sylvia also argues that the trial "court erroneously relied on Evidence Code Section 622 to support its judgment." (Boldfacing omitted.) We disagree. Evidence Code section 622 provides, in relevant part: "The facts recited in a written instrument are

conclusively presumed to be true . . . ." In its statement of decision, the court found that Evidence Code section 622 "could, in and of itself, be sufficient evidence to rebut the presumption of undue influence." However, in the next paragraph, the court found "that there were additional facts contained within the record that demonstrate[] that [Larry] has, in fact, rebutted the presumption." The court then went on to specify and discuss those additional facts (the substantial evidence) that rebutted the presumption of undue influence. Therefore, it is clear that the trial court did not rely on Evidence Code section 622 to support its judgment.

Finally, Sylvia argues that she did not understand the IGTD and the status of Observatory as community property. But we are not going to relitigate those factual arguments on appeal; they were ruled on by Judge Ospino. In a substantial evidence review, we do not reweigh the evidence. Having found substantial evidence to support the trial court's findings, we affirm.

## B. Evidentiary Issues

Sylvia contends that Larry's trial counsel asked him two leading questions during the initial trial. Sylvia argues that: "The evidentiary rulings were erroneous and prejudicial . . . ." (Original boldfacing, capitalization, and underlining omitted.) We disagree.

"A 'leading question' is a question that suggests to the witness the answer that the examining party desires." (Evid. Code, § 764.) Questions calling for a "yes" or "no" answer are not necessarily leading unless they are unduly suggestive. (*People v. Williams* (1997) 16 Cal.4th 635, 672.) "[L]eading questions 'may not be asked of a witness on direct or redirect examination' except in 'special circumstances where the interests of justice otherwise require.' Trial courts have broad discretion to decide when such special circumstances are present." (*Williams, supra*, 16 Cal.4th at p. 672.)

"[E]specially in bench trials, many judges routinely permit mildly leading questions on direct examination." (1 McCormick On Evidence (7th ed. 2016.) § 6, p. 27, fn. 6.)

"A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless: [¶] (a) There appears of record an objection . . . that was timely made and so stated as to make clear the specific ground of the objection . . .; and [¶] (b) The court which passes upon the effect of the error or errors is of the opinion that the admitted evidence should have been excluded on the ground stated and that the error or errors complained of resulted in a miscarriage of justice." (Evid. Code, § 353.)

Here, during the first trial, Larry's counsel asked him: "Now you had a discussion with [Sylvia] that this was going to be your separate property in the summer; is that correct?" Larry responded: "Yes." Sylvia did not object; therefore, her belated opposition to the form of the question is forfeited on appeal.

Later on, Larry's counsel asked him: "When you had the discussions to purchase Observatory, taking you back to that time, didn't I hear you testify on direct that you told [Sylvia] that you wouldn't purchase it unless it was your separate property?" Sylvia's counsel objected: "Leading." The court overruled the objection and Larry responded, "Yes."

Counsel simply asked Larry whether he recalled his earlier testimony. The question did not unduly suggest the answer; Larry could have answered, "Yes" or "No." Further, when it acts as a fact finder, a trial court can generally evaluate a witness' testimony regardless of the form of the question. Thus, we find that the court did not abuse its broad discretion when it overruled Sylvia's "leading" objection.

In any event, even if we were to find error, we would not find prejudice. If the court would have sustained Sylvia's objection, it is likely Larry's counsel would have rephrased the question and elicited the same testimony.

## III

# DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to Respondent.

MOORE, ACTING P. J.